IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No. 91-SB of 2003
Date of decision:- 04.08.2011

Binder Singh

....Appellant

Vs.

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE A.N. JINDAL

Present:- Mr. Ram Bilas Gupta, Amicus Curiae, for the appellant.

Mr. P.C. Goyal, Addl. A.G., Punjab.

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A.N. JINDAL, J (ORAL)

This appeal assails the judgment dated 11.10.2002 passed by the Additional Sessions Judge-cum-Judge, Special Court, Barnala, convicting and sentencing accused-appellant Binder Singh (herein referred as 'the accused) to undergo rigorous imprisonment for 6 years and to pay a fine of Rs.60,000/-, under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (herein referred as 'the NDPS Act').

In short, the allegations are that on 20.04.1997, when S.I. Darshan Singh, along with other police officials was going from village Handiaya through link road to village Dhaula in connection with checking of some suspects and reached near the bridge of village Dhaula, the accused was seen coming on the katcha path while carrying a gunny bag. On suspicion, he was

apprehended and after giving him option to be searched in the presence of a Gazetted Officer or a Magistrate, however the accused reposed confidence in him. Then the Investigating Officer got unloaded the bag carried by him and on its search, poppy husk was detected, out of which two samples of 250 grams each were separated and the remaining poppy husk on weighment came to be 29 kgs 500 grams. The samples and the remaining poppy husk were sealed by S.I. Darshan Singh with his seal bearing impression 'DS' and were taken into police possession. Sample seal was also prepared separately. Ruqa was sent to the police station, on the basis of which, formal FIR was recorded. On receipt of the report of Chemical Examiner and on completion of the investigation, challan against the accused was presented.

The accused denied the charge framed against him under Section 15 of the NDPS Act and claimed trial.

In order to substantiate the charge against the accused, the prosecution examined SI Darshan Singh, Investigating Officer (PW-1), constable Piara Singh (PW-2), HC Tarsem Singh (PW-3), HC Gurbax Singh (PW-4) and SI Nahar Singh (PW-5).

The accused when examined under Section 313 Cr.P.C., he denied all the incriminating circumstances appearing against him and pleaded his false implication in the case, but did not lead any evidence in defence.

The trial resulted into conviction.

Arguments heard. Record perused.

Multifold contentions were pressed into service by

learned counsel for the accused in order to assail the prosecution version. The contention that independent witness was not examined lacks merit. It is the quality of evidence and not the quantity, which weighs with the mind of the Court. Since it is a case relating to search of bag, therefore, Section 50 of the Act is not applicable. Sections 52, 55 and 57 of the Act are merely directory in nature. It is established beyond doubt that the accused was found in possession of 30 Kgs of poppy husk.

As regards his plea of taking a lenient view, it is observed that since this petty recovery was effected way back in the year 1997; the accused has already undergone some part of the sentence and he is sole bread winner of his family, it is a fit case where some reduction in sentence could be made.

Under these peculiar circumstances, this appeal is dismissed with the modification in the sentence and the same is reduced to two years. The amount of fine imposed upon the accused is also reduced to Rs.6000/-.

Copy of the judgment be sent to the learned Chief Judicial Magistrate, Sangrur for compliance.

Amicus Curiae would be at liberty to claim remuneration from the competent authority as per rules.

(A.N.JINDAL)
JUDGE

4th of August, 2011
ajp